

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FERNANDO GASTELUM,

Plaintiff,

v.

HIE RIVER PARK LLC, dba Holiday Inn
Express Fresno Riverpark,

Defendant.

No. 1:23-cv-00472-JLT-SKO

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO STRIKE
PLAINTIFF'S DIVERSITY
ALLEGATIONS AND DECLINE
SUPPLEMENTAL JURISDICTION OVER
PLAINTIFF'S STATE LAW CLAIMS**

(Doc. 12)

Plaintiff Fernando Gastelum ("Plaintiff"), proceeding *pro se* and *in forma pauperis*, initiated this action against Defendant Hie River Park LLC, doing business as Holiday Inn Express Fresno Riverpark. (Docs. 1, 4.) Following an order to show cause, on August 30, 2023, the assigned magistrate judge issued findings and recommendations recommending that the Court decline to exercise supplemental jurisdiction over Plaintiff's state law claims and that those claims be dismissed, without prejudice, pursuant to 28 U.S.C. § 1367(c)(4). (Doc. 12.) The assigned magistrate judge also recommended that the diversity allegations contained in Plaintiff's operative complaint be stricken pursuant to Federal Rule of Civil Procedure 12(f). (*Id.*)

The findings and recommendations were served on Plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (Doc. 12 at 10.) No objections have been filed, and the time in which to do so has passed. (*See* Docket.)

1 According to 28 U.S.C. § 636(b)(1)(c) and *Britt v. Simi Valley United School Dist.*, 708 F.2d
2 452, 454 (9th Cir. 1983), the Court conducted a *de novo* review of the case. Having carefully
3 reviewed the matter, the Court finds that the findings and recommendations are supported by the
4 record and proper analysis. Based upon the foregoing, the Court **ORDERS**:

- 5 1. The findings and recommendations issued on August 30, 2023 (Doc. 12) are
6 **ADOPTED IN FULL**.
- 7 2. The diversity allegations contained in Plaintiff's operative complaint (Doc. 7) are
8 **STRICKEN** pursuant to Rule 12(f).
- 9 3. Pursuant to 28 U.S.C. § 1367(c)(4) and *Vo v. Choi*, 49 F.4th 1167 (9th Cir. 2022),
10 the Court **DECLINES** to exercise supplemental jurisdiction over Plaintiff's claims
11 under California's Unruh Act and Disabled Persons Act.
- 12 4. Plaintiff's Unruh Act and Disabled Persons Act claims are **DISMISSED** without
13 prejudice pursuant to 28 U.S.C. § 1367(c)(4).
- 14 5. This matter is referred back to the Magistrate Judge for further proceedings.

15
16 IT IS SO ORDERED.

17 Dated: **September 20, 2023**


UNITED STATES DISTRICT JUDGE